

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DIVISION
Abingdon Division**

KYMBERLY HOBBS, ADMINISTRATOR
OF THE ESTATE OF CHARLES JAMES GIVENS,
DECEASED,

Plaintiff,

Civil Action No.: 1:23-cv-00003

v.

ANTHONY RAYMOND KELLY, et al.,

Defendants.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO THE
MOTION FOR A PROTECTIVE ORDER BY DEFENDANTS ARTRIP
AND POSTON AND NON-PARTY VIRGINIA DEPARTMENT OF CORRECTIONS**

Plaintiff Kymberly Hobbs, Administrator of the Estate of Charles James Givens, deceased, by counsel, and for her Memorandum in Opposition to Defendants Jeffrey Artrip and Travis Poston non-party Virginia Department of Corrections (collectively, "Movants")'s Motion for a Protective Order, states:

The Movants seek to preclude discovery into the allegations of intentional freezing and cold-water torture in the Amended Complaint. As they argue in their simultaneously filed Motion to Dismiss and supporting memorandum, ECF Doc. Nos. 54 and 55, Defendants Artrip and Poston assert that the incidents of intentional freezing and cold-water torture are not linked to the beating death of Mr. Givens. They argue that those prior instances of abuse have no relevance to his eventual death at the hands of those abusers. Accordingly, the Movants claim that any discovery into the instances of intentionally brought about hypothermia and cold-water torture is unwarranted. This contention falls short.

As fully explained in Plaintiff's Memorandum in Opposition to Defendant Artrip and Poston's Motion to Dismiss, *see* ECF Doc. No. 61, the hypothermia and cold-water exposure are linked to Mr. Givens' death as they are previous instances of excessive force perpetrated by officers supervised in part by Defendants Artrip and Poston. Moreover, even if those events are separated from the other physical assaults, the deliberate indifference of Defendants Artrip and Poston in response to those events led, as a natural and probable consequence, to the beating death of Mr. Givens. Accordingly, Plaintiff may seek discovery regarding those previous events of hypothermia and cold-water showers just as she may regarding all the other aspects of her Amended Complaint.¹

Defendants Artrip and Poston's Motion to Dismiss and the Movants' Motion for a Protective Order both rest on two faulty legal premises: that instances of excessive force can be separated by the type of force used and that the previous unconstitutional actions must be perfectly aligned with the current constitutional injury for purposes of a *Shaw* claim. Neither premise is true, and both motions should be denied.

For the reasons stated above, Plaintiff asks this Court to deny the Movants' Motion for a Protective Order.

Respectfully submitted,

By: /s/ Danny Zemel
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¹ Although the Movants mention discovery efforts to date, and identify, among other things, the number of documents produced by VADOC – with the unstated suggestion that they have adequately carried out their discovery obligations – their motion is based solely on the relevance of the “issues of hypothermia and alleged cold exposure at Marion.” ECF Doc. No. 53, at 4. They move for “an order forbidding discovery” into some issues solely because they argue those issues are irrelevant. Accordingly, Plaintiff will only address that contention.

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*Counsel for Plaintiff Kymberly Hobbs, Administrator of the Estate of Charles James Givens,
Deceased*

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March 2024, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing all counsel of record.

/s/ Danny Zemel
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